

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #8	CCRB Case #: 201401361	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/08/2014 6:10 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 8/8/2015	EO SOL 8/8/2015	
Date/Time CV Reported Tue, 02/11/2014 11:11 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/11/2014 11:11 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Desmond Nichols	19199	944850	PSA 8
2. LT Michael Brown	00000	917341	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.LT Michael Brown	Abuse: Lt. Michael Brown entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POM Desmond Nichols	Abuse: PO Desmond Nichols entered § 87(2)(b) the Bronx.	§ 87(2)(b)
C.LT Michael Brown	Force: Lt. Michael Brown used physical force against § 87(2)(b)	§ 87(2)(b)
D.LT Michael Brown	Abuse: Lt. Michael Brown threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

### Case Summary

On February 8, 2014, at approximately 6:10 p.m., police officers knocked on § 87(2)(b)'s door at § 87(2)(b) in the Bronx. § 87(2)(b) answered the door and spoke with Lt. Michael Brown and PO Desmond Nichols, both of PSA8. PO Nichols allegedly asked Lt. Brown, "Is that her?" Lt. Brown responded yes, and then both he and PO Nichols entered § 87(2)(b)'s apartment without consent. (**Allegations A and B**) The officers then approached § 87(2)(b)'s daughter, § 87(2)(b) as she stood in the kitchen.

PO Nichols placed § 87(2)(b) in handcuffs. As he did so, § 87(2)(b)'s mother, § 87(2)(b) asked why they were arresting her daughter. Lt. Brown allegedly pushed § 87(2)(b) and caused her to fall. (**Allegation C**) § 87(2)(b) struck her head on the corner of a wall as she fell, and she lost consciousness. § 87(2)(b) asked Lt. Brown why he pushed his wife, and Lt. Brown removed his baton from its holster and allegedly said, "You sit down. I can lash you with this." (**Allegation D**)

§ 87(2)(b) regained consciousness just before § 87(2)(b) was removed from the apartment. § 87(2)(b) exited the apartment but fainted in the hallway. A neighbor called 911 and § 87(2)(b) was transported to § 87(2)(b) where she complained of head, chest, and abdominal pain, and stated that she had a seizure when a police officer pushed her down. [encl. M1-M57]

This case was originally assigned to Inv. Galen Banes but was reassigned to Inv. Eva Vaillancourt following his departure from the agency. The case was then reassigned to Inv. Jeffrey Mulinelli on November 24, 2014.

### Mediation, Civil, and Criminal Histories

On January 10, 2015, a NOC inquiry was filed with the Office of the New York City Comptroller. Its results will be added to the case file upon receipt.

At the time this complaint was filed, it was ineligible for mediation due to § 87(2)(b)'s arrest.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) [encl. B3-B5]

This is the first CCRB complaint against Lt. Brown during his 18 year tenure. [encl. B1]

PO Nichols has been a member of the service for 7 years, and there have been 2 substantiated allegations against him. [encl. B2]

### Investigative Findings and Recommendations

- **Allegation A) Abuse of Authority: Lt. Michael Brown entered § 87(2)(b) in the Bronx.**
- **Allegation B) Abuse of Authority: PO Desmond Nichols entered § 87(2)(b) in the Bronx.**

§ 87(2)(b) testified that Lt. Brown and PO Nichols arrived at his apartment at § 87(2)(b) at approximately 6:20 p.m. When § 87(2)(b) opened the door, neither officer said anything to him. PO Nichols asked Lt. Brown, “Is that her?” Lt. Brown replied yes, and then both he and PO Nichols allegedly rushed past § 87(2)(b) and entered his apartment without consent. [encl. C5-C10]

§ 87(2)(b) s wife, § 87(2)(b) was also present during the incident, and her testimony was generally consistent with his. [encl. C11-C15]

§ 87(2)(b) believed that § 87(2)(b) gave Lt. Brown permission to enter the apartment but did not recall specifically whether he did so. [encl. C16-C22]

Lt. Brown testified that he was aware of over 30 calls to 911 reporting serious incidents, including shots fired, from § 87(2)(b). These calls took place over the course of six weeks prior to the incident date. Lt. Brown was concerned about the 911 calls and the danger that these false reports presented to the community and to officers. On February 7, 2014, the day before the incident, he consulted Cpt. Vanessa Kight of PSA8 regarding the matter. Lt. Brown later went to § 87(2)(b) called an ambulance, and had § 87(2)(b) transported to a hospital for a psychiatric evaluation.

On February 8, 2014, Cpt. Kight informed Lt. Brown that § 87(2)(b) had been released from the hospital and false reports were again being made. After listening to the recordings, Lt. Brown believed that § 87(2)(b) had made the calls. Lt. Brown and PO Nichols went to § 87(2)(b) at about 6:30 p.m. Lt. Brown had visited the apartment numerous times, and he was aware that § 87(2)(b) was usually home at about 6:30 p.m. The officers did not have an I-card or a warrant for § 87(2)(b) s arrest.

According to Lt. Brown, § 87(2)(b) answered the door. He had a brief conversation with § 87(2)(b) regarding the arrest of § 87(2)(b) and § 87(2)(b) was upset. § 87(2)(b) did not make any attempt to block the officers’ entry into the apartment, but he did not move out of the way either. Lt. Brown interpreted the fact that § 87(2)(b) opened the door to imply consent for the officers’ entry, and he and PO Nichols walked into the apartment. Neither Lt. Brown nor PO Nichols asked for permission to enter. [encl. D1-D7]

PO Nichols testified that he went to § 87(2)(b) which Lt. Brown said was § 87(2)(b) s residence, at approximately 5:40 p.m. § 87(2)(b) opened the door and stepped backward. Lt. Brown and PO Nichols then entered the apartment without having any conversation with § 87(2)(b) or anyone else inside. [encl. D8-D16]

An Event Summary from MAS revealed 42 events for the address § 87(2)(b) between January 20, 2014, and February 8, 2014. Four of these calls were made on February 8, 2014, the last of which was placed at 1:33 p.m. [encl. E1-E3]

Officers may enter a home without a warrant to make an arrest if probable cause and exigent circumstances are present. Circumstances considered exigent include but are not limited to the gravity or violent nature of the offense, a reasonable belief that the suspect is armed, a clear showing of probable cause, a strong reason to believe that the suspect is inside the location being

entered, the likelihood of escape, and the peaceful circumstances of the entry. People v. McBride, 14N.Y.3d 440. [encl. A1-A7]

§ 87(2)(g)

**Allegation C) Force: Lt. Michael Brown used physical force against** § 87(2)(b)

§ 87(2)(b) testified that, as the officers attempted to handcuff § 87(2)(b) § 87(2)(b) protested verbally. Lt. Brown then approached § 87(2)(b) and pushed her with one hand. § 87(2)(b) fell as a result of the push, and she hit her head on the wall. § 87(2)(b) lost consciousness and remained on the floor for 10 to 15 minutes. [encl. C5-C10]

§ 87(2)(b) stated that Lt. Brown used his right forearm to strike her on the side of her head. [encl. C11-C15] Her medical records indicate that she was transported to § 87(2)(b) and complained of head pain and abdominal pain. § 87(2)(b) was noted several times as being a poor historian with a bizarre affect. The Essentials of Psychiatric Mental Health Nursing, 2<sup>nd</sup> Edition, defines a bizarre affect as a patient's inability to relate logically to his or her environment. [enc. A34] § 87(2)(b)'s account of the incident changed throughout the medical report. § 87(2)(b) stated that she had a seizure when her daughter was arrested, but later said that she had been pushed and struck her head against a wall before passing out. § 87(2)(b)'s previous medical history included diabetes, substance abuse, and a seizure disorder.

§ 87(2)(b) testified that Lt. Brown pushed § 87(2)(b) by placing both of his hands on her chest. [encl. C16-C22]

§ 87(2)(b)'s neighbor, § 87(2)(b) witnessed § 87(2)(b) faint in the hallway following § 87(2)(b)'s arrest. She believed that § 87(2)(b) was having a diabetic attack and called 911. § 87(2)(b) did not witness any of the events which took place inside of the § 87(2)(b)'s apartment.

Lt. Brown testified that § 87(2)(b) stepped in front of § 87(2)(b) as the officers placed her in handcuffs and then fell to the floor of her own volition. Lt. Brown did not make any physical contact with § 87(2)(b) before she fell to the floor, and he did not see her hit a wall as she fell. Lt. Brown believed that § 87(2)(b) pretended to faint and was not unconscious. [encl. D1-D7]

PO Nichols corroborated Lt. Brown's testimony that § 87(2)(b) collapsed to the ground without either officer making physical contact with her. PO Nichols believed that § 87(2)(b) "force collapsed" as she stood 3 feet away. He did not see Lt. Brown push her at any time. [encl. D8-D16]

§ 87(2)(g)  
[REDACTED]

**Allegation D) Abuse of Authority: Lt. Michael Brown threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated he protested after Lt. Brown's push caused his wife to lose consciousness. Lt. Brown removed his baton and told § 87(2)(b) "You sit down. I can lash you with this." [encl. C5-C10]

§ 87(2)(b) testified that § 87(2)(b) was acting "hyper" after § 87(2)(b) lost consciousness. Lt. Brown told § 87(2)(b) "Sit down before something will happen or worse." [encl. C16-C22]

Lt. Brown testified that § 87(2)(b) became belligerent and used profanity toward the officers after § 87(2)(b) lost consciousness. Lt. Brown said that he probably removed his asp, but he did not threaten to hit § 87(2)(b) with it at any point. [encl. D1-D7]

PO Nichols saw Lt. Brown remove his asp, but he did not hear him threaten to hit § 87(2)(b) with it. [encl. D8-D16]

An implied threat of force must serve a legitimate purpose other than to intimidate. NYPD v. Briscoe, OATH No. 1328/00. [encl. A8-A33]

§ 87(2)(g)  
[REDACTED]

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Pod: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date